

the area where the services are rendered or the goods are furnished, except as otherwise permitted or approved by HUD.

#### §232.1009 Financial reports.

The borrower must provide HUD and lender an audited annual financial report based on an examination of its books and records, in such form and substance required by HUD in accordance with 24 CFR 5.801 and 24 CFR 200.36. Operators must submit financial statements quarterly within 30 calendar days of the date of the end of each fiscal quarter, setting forth both quarterly and fiscal year-to-date information, except that the final fiscal year end quarter must be submitted to HUD and lender within 60 calendar days of the end of the quarter, in accordance with 24 CFR 5.801(c)(4).

#### §232.1011 Management agents.

(a) An operator or borrower may, with the prior written approval of HUD, execute a management agent agreement setting forth the duties and procedures for matters related to the management of the project. The management agent, each initial management agent agreement with that agent, and any amendments to such management agent agreements deemed material by the Commissioner must be acceptable to HUD and approved in writing by HUD.

(b) An operator or borrower may not enter into any agreement that provides for a management agent to have rights to or claims on funds owed to the operator.

#### §232.1013 Restrictions on deposit, withdrawal, and distribution of funds, and repayment of advances.

(a) *Deposit of funds.* An operator must deposit all revenue the operator receives directly or indirectly in connection with the operation of the healthcare facility in an account with a financial institution whose deposits are insured by an agency of the Federal Government, *provided* that an account held in an institution acceptable to Ginnie Mae may have a balance that exceeds the amount to which such insurance is limited.

(b) *Withdrawal of funds.* If a quarterly/year-to-date financial statement demonstrates negative working capital as defined by HUD, or if the operator fails to timely submit such statement, then until a current quarterly/year-to-date financial statement demonstrates positive working capital or until otherwise authorized by HUD, the operator may not distribute, advance, or otherwise use funds attributable to that facility for any purpose other than operating that facility.

#### §232.1015 Prompt notification to HUD and mortgagee of circumstances placing the value of the security at risk.

(a) HUD and the mortgagee shall be informed of any notification of any failure to comply with governmental requirements including the following:

(1) The licensed operator of a project shall promptly provide HUD and the mortgagee with a copy of any notification that has placed the licensure, a provider funding source, and/or the ability to admit new residents at risk, and any responses to those notices, provided that HUD may determine certain information to be exempt from this requirement based upon severity level. With respect to the requirements of this section:

(i) The operator shall deliver to HUD and the mortgagee electronically, within 2 business days after the date of receipt, unless a longer time period is approved by HUD, copies of any and all notices, reports, surveys, and other correspondence (regardless of form) received by the operator from any governmental authority that includes any statement, finding, or assertion that:

(A) The operator or the project is or may be in violation of (or default under) any of the permits and approvals or any governmental requirements applicable to the operation of the facility;

(B) Any of the permits and approvals is to be terminated, limited in any way, or not renewed;

(C) Any civil money penalty (other than a de minimis amount) is being imposed with respect to the facility; or

(D) The operator or the project is subject to any governmental investigation or inquiry involving fraud.